
UTAH LABOR COMMISSION

GEORGE M. OLSEN,

Petitioner,

vs.

**UTAH CONCRETE PIPE CO.,
CONTINENTAL INSURANCE CO.,
and EMPLOYERS' REINSURANCE
FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 06-0377

George M. Olsen asks the Utah Labor Commission to review Administrative Law Judge Sessions' denial of Mr. Olsen's claim for permanent total disability benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to § 63G-4-301 of the Utah Administrative Procedures Act and § 34A-2-801(3) of the Utah Workers Compensation Act.

BACKGROUND AND ISSUE PRESENTED

Mr. Olsen claims permanent total disability compensation for the accidental amputation of his right arm while working for Utah Concrete Pipe Co. on November 6, 1963. After an evidentiary hearing, Judge Sessions concluded that Mr. Olsen's work injury had not rendered him permanently and totally disabled. Judge Sessions therefore denied Mr. Olsen's claim for compensation.

In requesting Commission review of Judge Sessions' decision, Mr. Olsen argues that Judge Sessions' findings are inconsistent with the evidence presented at hearing and that such evidence establishes Mr. Olsen's entitlement to permanent total disability compensation.

FINDINGS OF FACT

The Commission has reviewed the entire evidentiary record in this matter and makes the following findings of fact.

Mr. Olsen was born in May 1924. He graduated from high school and served in the military during World War II, where he was wounded in the leg and also developed a chronic sinus condition. After his military service, Mr. Olsen completed approximately 3 years of college. Between 1949 and 1956, he supervised W.W. Clyde Co.'s construction of infrastructure for the city of Page, Arizona. Mr. Olsen then accepted employment as plant superintendant of Utah Concrete's facility at Ogden,

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Utah. While working there on November 6, 1963, Mr. Olsen attempted to clear some rocks out of a conveyor apparatus. The conveyor belt unexpectedly began moving, catching Mr. Olsen's right arm. As a result of this accident, Mr. Olsen's right arm was amputated just below the elbow.

Remarkably, in less than a week after the traumatic amputation of his lower right arm, Mr. Olsen returned to his regular supervisory duties at Utah Concrete. He was subsequently fitted with a right-arm prosthesis and has used a prosthesis through the years since his accident. The loss of his dominant lower right arm caused Mr. Olsen difficulty in some aspects of his personal and work life. It was more difficult for Mr. Olsen to attend to personal matters such as dressing, grooming, and the like. At work, it was time consuming for Mr. Olsen to fill out required reports with his left hand. Mr. Olsen developed adaptive techniques to partially mitigate these problems. While Mr. Olsen experienced chronic moderate pain in his arm after his accident, the arm's condition has been essentially stable and he has experienced relatively few medical complications from the injury. He uses Tylenol for the pain and has rejected more potent pain medications due to their side effects.

In 1969, Mr. Olsen accepted an offer to work as a plant superintendant for Basalt Rock Co. in California. In 1976, Utah Concrete — by then known as Amcor — persuaded Mr. Olsen to return to its employment, again as a plant superintendant. Mr. Olsen returned to Utah and continued working as plant superintendant for Amcor until the date of his retirement on December 31, 1986.

At the time of his retirement from Amcor, Mr. Olsen qualified for a company pension and social security retirement benefits, as well as a military disability benefit as a result of his war injury. After his retirement, Mr. Olsen was called back to work by Amcor on a contract basis as a consultant and to design equipment. As demonstrated by his work history, Mr. Olsen was a competent and sought-after management employee throughout the period of his active employment and afterwards during his retirement.

Mr. Olsen's decision to retire on December 31, 1986, stemmed from several factors. He knew of others his age with similar work responsibilities who he believed had died due to stress. He found it difficult to hire and train new workers. Furthermore, at the time Amcor was acquiring other operations throughout the United States and Mr. Olsen was required to travel to those sites as well as perform his regular work duties. He believed his health was declining. The pain and functional limitations from his work injury added additional burdens. Although Mr. Olsen continued to successfully perform his work duties, over a period of several years he came to the conclusion that it would be prudent for him to retire when he qualified for his company pension and social security retirement benefits.

Mr. Olsen's non-work medical problems include the removal of his thyroid in 1956, several years prior to his work accident. After his retirement at the end of 1986, Mr. Olsen experienced heart arrhythmia and implantation of a pacemaker, prostate cancer, left carpal tunnel syndrome and ganglion cyst, arthritis, depression, and colon polyps.

DISCUSSION AND CONCLUSION OF LAW

The Utah Workers' Compensation Act provides various medical benefits and disability compensation to employees who suffer work-related injuries. There is no dispute that Mr. Olsen's injury is compensable under the Act, and he has previously received medical benefits and permanent partial disability compensation. The only issue now in dispute is whether Mr. Olsen is also entitled to permanent total disability compensation.

Mr. Olsen's claim for permanent total disability compensation must be evaluated according to the law in effect on November 6, 1963, the date of his work injury. At that time, § 35-1-67 of the Utah Workers' Compensation Act provided for payment of permanent total disability compensation but did not set out the standards for evaluating an injured worker's claim for such compensation. Instead, those standards were derived from appellate decisions of the Utah Supreme Court, such as the Court's decision in *United Park City Mines Company v. Prescott*, 15 Utah 410, 412 (Utah 1964), in which the Court held that:

[A] workman may be found totally disabled if by reason of the disability resulting from his injury he cannot perform work of the general character he was performing when injured, or any other work which a man of his capabilities may be able to do or to learn to do

In light of the foregoing standard for determining whether an injured worker is permanently and totally disabled, the Commission has carefully considered Mr. Olsen's work history, both before and after the accident of November 3, 1963. It is apparent that throughout his career, Mr. Olsen was highly skilled in the technical aspects of his work, competent as a supervisor and manager, and possessed of an impressive work ethic. It is also apparent that Mr. Olsen faced a very real challenge when he lost his lower right arm. However, his work record demonstrates that he rose to the challenge and continued on with a successful career over the next 23 years. The Commission does not minimize the continuing challenges Mr. Olsen faced as a result of his work-related impairment, or the pain he suffered from his injury. Nevertheless, the Commission is not persuaded that those factors prevented Mr. Olsen from continuing to work or motivated his decision to retire. The Commission therefore concludes that Mr. Olsen's work injury did not prevent him from performing "work of the general character he was performing when injured." Consequently, Mr. Olsen does not satisfy the applicable standards for a determination of permanent total disability.

The Commission has also considered Mr. Olsen's argument that he is entitled to permanent total disability compensation under what is known as the "odd-lot" doctrine. The Utah Supreme Court discussed the application of the odd-lot doctrine in *Marshall v. Industrial Commission*, 681 P.2d 208, 212 (Utah 1984), stating that "[w]hether or not an employee falls into the odd-lot category depends on whether there is regular, dependable work available for the employee who does not rely on the sympathy of friends or his own superhuman efforts." In this case, the evidence establishes that regular, dependable work was available to Mr. Olsen. In fact, his expertise and abilities were in

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real demand in the job market before and after his accident, and even after his retirement. The Commission concludes that the continuing availability of regular and dependable work for Mr. Olsen precludes application of the odd-lot doctrine to his claim.

In summary, the Commission finds that Mr. Olsen has not established that he is permanently and totally disabled under the standards in effect at the time of his 1963 accident, nor does Mr. Olsen's claim present circumstances that warrant application of the odd-lot doctrine. Consequently, the Commission concludes that Mr. Olsen is not entitled to permanent total disability compensation.

ORDER

The Commission affirms Judge Sessions' decision denying Mr. Olsen's claim for permanent total disability compensation. It is so ordered.

Dated this 28th day of January, 2010.



Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.